

Order

Michigan Supreme Court
Lansing, Michigan

July 11, 2006

Clifford W. Taylor,
Chief Justice

ADM File No. 2005-19

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment of
Rules 2.512, 2.513, 2.514, 2.515,
2.516, and 6.414 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.512, 2.513, 2.514, 2.515, 2.516, and 6.414 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 2.512 Instructions to Jury ~~Rendering Verdict~~

(A) ~~Majority Verdict; Stipulations Regarding Number of Jurors and Verdict. The parties may stipulate in writing or on the record that~~

- ~~(1) the jury will consist of any number less than 6,~~
- ~~(2) a verdict or a finding of a stated majority of the jurors will be taken as the verdict or finding of the jury, or~~
- ~~(3) if more than six jurors were impaneled, all of the jurors may deliberate.~~

~~Except as provided in MCR 5.740(C), in the absence of such stipulation, a verdict in a civil action tried by 6 jurors will be received when 5 jurors agree.~~

(B) ~~Return; Poll.~~

- ~~(1) The jury must return its verdict in open court.~~
- ~~(2) A party may require a poll to be taken by the court asking each juror if it is his or her verdict.~~

- (3) ~~If the number of jurors agreeing is less than required, the jury must be sent out for further deliberation; otherwise the verdict is complete, and the court shall discharge the jury.~~
- (C) ~~Discharge From Action; New Jury. The court may discharge a jury from the action:~~
 - (1) ~~because of an accident or calamity requiring it;~~
 - (2) ~~by consent of all the parties;~~
 - (3) ~~whenever an adjournment or mistrial is declared;~~
 - (4) ~~whenever the jurors have deliberated until it appears that they cannot agree.~~

~~The court may order another jury to be drawn, and the same proceedings may be had before the new jury as might have been had before the jury discharged.~~

- (D) ~~Responsibility of Officers.~~
 - (1) ~~All court officers, including trial attorneys, must attend during the trial of an action until the verdict of the jury is announced.~~
 - (2) ~~A trial attorney may, on request, be released by the court from further attendance, or the attorney may designate an associate or other attorney to act for him or her during the deliberations of the jury.~~

(A) Request for Instructions.

- (1) At a time the court reasonably directs, the parties must file written requests that the court instruct the jury on the law as stated in the requests. In the absence of a direction from the court, a party may file a written request for jury instructions at or before the close of the evidence.
- (2) In addition to requests for instructions submitted under subrule (A)(1), after the close of the evidence, each party shall submit in writing to the court a statement of the issues and may submit the party's theory of the case regarding each issue. The statement must be concise, be narrative in form, and set forth as issues only those disputed propositions of fact that are supported by the evidence. The theory may include those claims supported by the evidence or admitted.

- (3) A copy of the requested instructions must be served on the adverse parties in accordance with MCR 2.107.
- (4) The court shall inform the attorneys of its proposed action on the requests before their arguments to the jury.
- (5) The court need not give the statements of issues or theories of the case in the form submitted if the court presents to the jury the material substance of the issues and theories of each party.

(B) Instructing the Jury.

- (1) At any time during the trial, the court may, with or without request, instruct the jury on a point of law if the instruction will materially aid the jury in understanding the proceedings and arriving at a just verdict.
- (2) Before or after arguments or at both times, as the court elects, the court shall instruct the jury on the applicable law, the issues presented by the case, and, if a party requests as provided in subrule (A)(2), that party's theory of the case.

(C) Objections. A party may assign as error the giving of or the failure to give an instruction only if the party objects on the record before the jury retires to consider the verdict (or, in the case of instructions given after deliberations have begun, before the jury resumes deliberations), stating specifically the matter to which the party objects and the grounds for the objection. Opportunity must be given to make the objection out of the hearing of the jury.

(D) Model Civil Jury Instructions.

- (1) The Committee on Model Civil Jury Instructions appointed by the Supreme Court has the authority to adopt model civil jury instructions (M Civ JI) and to amend or repeal those instructions approved by the predecessor committee. Before adopting, amending, or repealing an instruction, the committee shall publish notice of the committee's intent, together with the text of the instruction to be adopted, or the amendment to be made, or a reference to the instruction to be repealed, in the manner provided in MCR 1.201. The notice shall specify the time and manner for commenting on the proposal. The committee shall thereafter publish notice of its final action on the proposed change, including, if appropriate, the effective date of the adoption, amendment, or repeal. A model civil jury instruction does not have the force and effect of a court rule.

- (2) Pertinent portions of the instructions approved by the Committee on Model Civil Jury Instructions or its predecessor committee must be given in each action in which jury instructions are given if
 - (a) they are applicable,
 - (b) they accurately state the applicable law, and
 - (c) they are requested by a party.
- (3) Whenever the committee recommends that no instruction be given on a particular matter, the court shall not give an instruction unless it specifically finds for reasons stated on the record that
 - (a) the instruction is necessary to state the applicable law accurately, and
 - (b) the matter is not adequately covered by other pertinent model civil jury instructions.
- (4) This subrule does not limit the power of the court to give additional instructions on applicable law not covered by the model instructions . Additional instructions, when given, must be patterned as nearly as practicable after the style of the model instructions and must be concise, understandable, conversational, unslanted, and nonargumentative.

Rule 2.513 Conduct of Jury Trial ~~View~~

- (A) Preliminary Instructions. After the jury is sworn and before evidence is taken, the court shall provide the jury with pretrial instructions reasonably likely to assist in its consideration of the case. Such instructions, at a minimum, shall communicate the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. The jury also shall be instructed about the elements of all civil claims or all charged offenses, as well as the legal presumptions and burdens of proof. The court shall provide each juror with a copy of such instructions. MCR 2.512(D)(2) does not apply to such preliminary instructions. By Jury. On motion of either party or on its own initiative, the court may order an officer to take the jury as a whole to view property or a place where a material event occurred. During the view, no person other than the officer designated by the court may speak to the jury concerning a subject connected with the trial. The court may order the party requesting a jury view to pay the expenses of the view.

- (B) Court's Responsibility. The trial court must control the proceedings during trial, limit the evidence and arguments to relevant and proper matters, and take appropriate steps to ensure that the jurors will not be exposed to information or influences that might affect their ability to render an impartial verdict on the evidence presented in court. The court may not communicate with the jury or any juror pertaining to the case without notifying the parties and permitting them to be present. The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.~~By Court. On application of either party or on its own initiative, the court sitting as trier of fact without a jury may view property or a place where a material event occurred.~~
- (C) Opening Statements. Unless the parties and the court agree otherwise, the plaintiff or the prosecutor, before presenting evidence, must make a full and fair statement of the case and the facts the plaintiff or the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a similar statement. The court may impose reasonable time limits on the opening statements.
- (D) Interim Commentary. Each party may, in the court's discretion, present interim commentary at appropriate junctures of the trial.
- (E) Reference Documents. The court must encourage counsel in civil and criminal cases to provide the jurors with a reference document or notebook, the contents of which should include, but which is not limited to, witness lists, relevant statutory provisions, and, in cases where the interpretation of a document is at issue, copies of the relevant document. The court and the parties may supplement the reference document during trial with copies of the preliminary jury instructions, admitted exhibits, and other appropriate information to assist jurors in their deliberations.
- (F) Deposition Summaries. Where it appears likely that the contents of a deposition will be read to the jury, the court should encourage the parties to prepare concise, written summaries of depositions for reading at trial in lieu of the full deposition. Where a summary is prepared, the opposing party shall have the opportunity to object to its contents. Copies of the summaries should be provided to the jurors before they are read.
- (G) Scheduling Expert Testimony. The court may, in its discretion, craft a procedure for the presentation of all expert testimony to assist the jurors in performing their duties. Such procedures may include, but are not limited to:
- (1) Scheduling the presentation of the parties' expert witnesses sequentially; or

- (2) allowing the opposing experts to be present during the other's testimony and to aid counsel in formulating questions to be asked of the testifying expert on cross-examination; or
 - (3) providing for a panel discussion by all experts on a subject after or in lieu of testifying. The panel discussion, moderated by a neutral expert or the trial judge, would allow the experts to question each other.
- (H) Note Taking by Jurors. The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes, and they should not permit note taking to interfere with their attentiveness. If the court allows jurors to take notes, jurors must be allowed to refer to their notes during deliberations, but the court must instruct the jurors to keep their notes confidential except as to other jurors during deliberations. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.
- (I) Juror Questions. The court may permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that such questions are addressed to the witnesses by the court itself, that inappropriate questions are not asked, and that the parties have an opportunity outside the hearing of the jury to object to the questions. The court shall inform the jurors of the procedures to be followed for submitting questions to witnesses.
- (J) Jury View. On motion of either party, on its own initiative, or at the request of the jury, the court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. During the view, no person, other than an officer designated by the court, may speak to the jury concerning the subject connected with the trial. Any such communication must be recorded in some fashion.
- (K) Juror Discussion. After informing the jurors that they are not to decide the case until they have heard all the evidence, instructions of law, and arguments of counsel, the court may instruct the jurors that they are permitted to discuss the evidence among themselves in the jury room during trial recesses. The jurors should be instructed that such discussions may only take place when all jurors are present and that such discussions must be clearly understood as tentative pending final presentation of all evidence, instructions, and argument.
- (L) Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The plaintiff or the prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the plaintiff or the

prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. The court may impose reasonable time limits on the closing arguments.

(M) Comment on the Evidence. After the close of the evidence and arguments of counsel, the court may fairly and impartially sum up the evidence and comment to the jury about the weight of the evidence, if it also instructs the jury that it is to determine for itself the weight of the evidence and the credit to be given to the witnesses and that jurors are not bound by the court's summation or comment. The court shall not comment on the credibility of witnesses or state a conclusion on the ultimate issue of fact before the jury.

(N) Final Instructions to the Jury.

(1) Before closing arguments, the court must give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of the written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must instruct the jury as required and appropriate, but at the discretion of the court, and on notice to the parties, the court may instruct the jury before the parties make closing arguments. After jury deliberations begin, the court may give additional instructions that are appropriate.

(2) Solicit Questions about Final Instructions. As part of the final jury instructions, the court shall advise the jury that it may submit in a sealed envelope given to the bailiff any written questions about the jury instructions that arise during deliberations. Upon concluding the final instructions, the court shall invite the jurors to ask any questions in order to clarify the instructions before they retire to deliberate.

If questions arise, the court and the parties shall convene, in the courtroom or by other agreed-upon means. The question shall be read into the record, and the attorneys shall offer comments on an appropriate response. The court may, in its discretion, provide the jury with a specific response to the jury's question, but the court shall respond to all questions asked, even if the response consists of a directive for the jury to continue its deliberations.

(3) Copies of Final Instructions. The court shall provide each juror with a written copy of the final jury instructions to take into the jury room for deliberation. The court, in its discretion, also may provide the jury with a copy of electronically recorded instructions.

- (4) Clarifying or Amplifying Final Instructions. Where it appears that a deliberating jury has reached an impasse, or is otherwise in need of assistance, the court may invite the jurors to list the issues that divide or confuse them in the event that the judge can be of assistance in clarifying or amplifying the final instructions.
- (O) Materials in the Jury Room. The court shall permit the jurors, on retiring to deliberate, to take into the jury room their notes and final instructions. The court may permit the jurors to take into the jury room the reference document, if one has been prepared, as well as any exhibits and writings admitted into evidence.
- (P) Provide Testimony or Evidence. If, after beginning deliberation, the jury requests a review of certain testimony or evidence that has not been allowed into the jury room under subrule (O), the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may make a video or audio recording of witness testimony, or prepare an immediate transcript of such testimony, and such tape or transcript, or other testimony or evidence, may be made available to the jury for its consideration. The court may order the jury to deliberate further without the requested review, as long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.

Rule 2.514 Rendering Verdict ~~Special Verdicts~~

- (A) ~~Use of Special Verdicts; Form.~~ The court may require the jury to return a special verdict in the form of a written finding on each issue of fact, rather than a general verdict. If a special verdict is required, the court shall, in advance of argument and in the absence of the jury, advise the attorneys of this fact and, on the record or in writing, settle the form of the verdict. The court may submit to the jury:
- (1) ~~written questions that may be answered categorically and briefly;~~
 - (2) ~~written forms of the several special findings that might properly be made under the pleadings and evidence; or~~
 - (3) ~~the issues by another method, and require the written findings it deems most appropriate.~~

~~The court shall give to the jury the necessary explanation and instruction concerning the matter submitted to enable the jury to make its findings on each issue.~~

- (B) ~~Judgment. After a special verdict is returned, the court shall enter judgment in accordance with the jury's findings.~~
- (C) ~~Failure to Submit Question; Waiver; Findings by Court. If the court omits from the special verdict form an issue of fact raised by the pleadings or the evidence, a party waives the right to a trial by jury of the issue omitted unless before the jury retires the party demands its submission to the jury. The court may make a finding as to an issue omitted without a demand; or, if the court fails to do so, it is deemed to have made a finding in accord with the judgment on the special verdict.~~
- (A) Majority Verdict; Stipulations Regarding Number of Jurors and Verdict. The parties may stipulate in writing or on the record that
- (1) the jury will consist of any number less than 6,
 - (2) a verdict or a finding of a stated majority of the jurors will be taken as the verdict or finding of the jury, or
 - (3) if more than six jurors were impaneled, all the jurors may deliberate.

Except as provided in MCR 5.740(C), in the absence of such stipulation, a verdict in a civil action tried by 6 jurors will be received when 5 jurors agree.

- (B) Return; Poll.
- (1) The jury must return its verdict in open court.
 - (2) A party may require a poll to be taken by the court asking each juror if it is his or her verdict.
 - (3) If the number of jurors agreeing is less than required, the jury must be sent back for further deliberation; otherwise, the verdict is complete, and the court shall discharge the jury.
- (C) Discharge From Action; New Jury. The court may discharge a jury from the action:
- (1) because of an accident or calamity requiring it;
 - (2) by consent of all the parties;
 - (3) whenever an adjournment or mistrial is declared;
 - (4) whenever the jurors have deliberated and it appears that they cannot agree.

The court may order another jury to be drawn, and the same proceedings may be had before the new jury as might have been had before the jury that was discharged.

(D) Responsibility of Officers.

- (1) All court officers, including trial attorneys, must attend during the trial of an action until the verdict of the jury is announced.
- (2) A trial attorney may, on request, be released by the court from further attendance, or the attorney may designate an associate or other attorney to act for him or her during the deliberations of the jury.

Rule 2.515 Special Verdicts ~~Motion for Directed Verdict~~

~~A party may move for a directed verdict at the close of the evidence offered by an opponent. The motion must state specific grounds in support of the motion. If the motion is not granted, the moving party may offer evidence without having reserved the right to do so, as if the motion had not been made. A motion for a directed verdict that is not granted is not a waiver of trial by jury, even though all parties to the action have moved for directed verdicts.~~

- (A) Use of Special Verdicts; Form. The court may require the jury to return a special verdict in the form of a written finding on each issue of fact, rather than a general verdict. If a special verdict is required, the court shall, in advance of argument and in the absence of the jury, advise the attorneys of this fact and, on the record or in writing, settle the form of the verdict. The court may submit to the jury:
- (1) written questions that may be answered categorically and briefly;
 - (2) written forms of the several special findings that might properly be made under the pleadings and evidence; or
 - (3) the issues by another method, and require the written findings it deems most appropriate.

The court shall give to the jury the necessary explanation and instruction concerning the matter submitted to enable the jury to make its findings on each issue.

- (B) Judgment. After a special verdict is returned, the court shall enter judgment in accordance with the jury's findings.

- (C) Failure to Submit Question; Waiver; Findings by Court. If the court omits from the special verdict form an issue of fact raised by the pleadings or the evidence, a party waives the right to a trial by jury of the issue omitted unless the party demands its submission to the jury before it retires for deliberations. The court may make a finding with respect to an issue omitted without a demand. If the court fails to do so, it is deemed to have made a finding in accord with the judgment on the special verdict.

Rule 2.516 Motion for Directed Verdict Instructions to Jury

(A) Request for Instructions.

- (1) ~~At a time the court reasonably directs, the parties must file written requests that the court instruct the jury on the law as stated in the requests. In the absence of a direction from the court, a party may file a written request for jury instructions at or before the close of the evidence.~~
- (2) ~~In addition to requests for instructions submitted under subrule (A)(1), after the close of the evidence each party shall submit in writing to the court a statement of the issues and may submit the party's theory of the case as to each issue. The statement must be concise, be narrative in form, and set forth as issues only those disputed propositions of fact which are supported by the evidence. The theory may include those claims supported by the evidence or admitted.~~
- (3) ~~A copy of the requested instructions must be served on the adverse parties in accordance with MCR 2.107.~~
- (4) ~~The court shall inform the attorneys of its proposed action on the requests before their arguments to the jury.~~
- (5) ~~The court need not give the statements of issues or theories of the case in the form submitted if the court presents to the jury the material substance of the issues and theories of each party.~~

(B) Instructing the Jury.

- (1) ~~After the jury is sworn and before evidence is taken, the court shall give such preliminary instructions regarding the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. MCR 2.516(D)(2) does not apply to such preliminary instructions.~~

- (2) ~~At any time during the trial, the court may, with or without request, instruct the jury on a point of law if the instruction will materially aid the jury to understand the proceedings and arrive at a just verdict.~~
- (3) ~~Before or after arguments or at both times, as the court elects, the court shall instruct the jury on the applicable law, the issues presented by the case, and, if a party requests as provided in subrule (A)(2), that party's theory of the case. The court, at its discretion, may also comment on the evidence, the testimony, and the character of the witnesses as the interests of justice require.~~
- (4) ~~While the jury is deliberating, the court may further instruct the jury in the presence of or after reasonable notice to the parties.~~
- (5) ~~Either on the request of a party or on the court's own motion, the court may provide the jury with~~
 - (a) ~~a full set of written instructions,~~
 - (b) ~~a full set of electronically recorded instructions, or~~
 - (c) ~~a partial set of written or recorded instructions if the jury asks for clarification or restatement of a particular instruction or instructions or if the parties agree that a partial set may be provided and agree on the portions to be provided.~~

~~If it does so, the court must ensure that such instructions are made a part of the record.~~

- (C) ~~Objections. A party may assign as error the giving of or the failure to give an instruction only if the party objects on the record before the jury retires to consider the verdict (or, in the case of instructions given after deliberations have begun, before the jury resumes deliberations), stating specifically the matter to which the party objects and the grounds for the objection. Opportunity must be given to make the objection out of the hearing of the jury.~~
- (D) ~~Model Civil Jury Instructions.~~
 - (1) ~~The Committee on Model Civil Jury Instructions appointed by the Supreme Court has the authority to adopt model civil jury instructions (M-Civ-JI) and to amend or repeal those instructions approved by the predecessor committee. Before adopting, amending, or repealing an instruction, the committee shall publish notice of the committee's intent, together with the~~

~~text of the instruction to be adopted, or the amendment to be made, or a reference to the instruction to be repealed, in the manner provided in MCR 1.201. The notice shall specify the time and manner for commenting on the proposal. The committee shall thereafter publish notice of its final action on the proposed change, including, if appropriate, the effective date of the adoption, amendment, or repeal. A model civil jury instruction does not have the force and effect of a court rule.~~

- (2) ~~Pertinent portions of the instructions approved by the Committee on Model Civil Jury Instructions or its predecessor committee must be given in each action in which jury instructions are given if~~
 - (a) ~~they are applicable,~~
 - (b) ~~they accurately state the applicable law, and~~
 - (c) ~~they are requested by a party.~~
- (3) ~~Whenever the committee recommends that no instruction be given on a particular matter, the court shall not give an instruction unless it specifically finds for reasons stated on the record that~~
 - (a) ~~the instruction is necessary to state the applicable law accurately, and~~
 - (b) ~~the matter is not adequately covered by other pertinent model civil jury instructions.~~
- (4) ~~This subrule does not limit the power of the court to give additional instructions on applicable law not covered by the model instructions. Additional instructions when given must be patterned as nearly as practicable after the style of the model instructions and must be concise, understandable, conversational, unslanted, and nonargumentative.~~

A party may move for a directed verdict at the close of the evidence offered by an opponent. The motion must state specific grounds in support of the motion. If the motion is not granted, the moving party may offer evidence without having reserved the right to do so, as if the motion had not been made. A motion for a directed verdict that is not granted is not a waiver of trial by jury, even though all parties to the action have moved for directed verdicts.

Rule 6.414 Conduct of Jury Trial

- (A) Before trial begins, the court should give the jury appropriate pretrial instructions.
- (B) ~~Court's Responsibility.~~ The trial court must control the proceedings during trial, limit the evidence and arguments to relevant and proper matters, and take appropriate steps to ensure that the jurors will not be exposed to information or influences that might affect their ability to render an impartial verdict on the evidence presented in court. The court may not communicate with the jury or any juror pertaining to the case without notifying the parties and permitting them to be present. The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.
- (C) ~~Opening Statements.~~ Unless the parties and the court agree otherwise, the prosecutor, before presenting evidence, must make a full and fair statement of the prosecutor's case and the facts the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a like statement. The court may impose reasonable time limits on the opening statements.
- (D) ~~Note Taking by Jurors.~~ The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes, and they should not permit note taking to interfere with their attentiveness. The court also must instruct the jurors to keep their notes confidential except as to other jurors during deliberations. The court may, but need not, allow jurors to take their notes into deliberations. If the court decides not to permit the jurors to take their notes into deliberations, the court must so inform the jurors at the same time it permits the note taking. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.
- (E) ~~Juror Questions.~~ The court may, in its discretion, permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that inappropriate questions are not asked, and that the parties have the opportunity to object to the questions.
- (F) ~~View.~~ The court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. During the view, no persons other than, as permitted by the trial judge, the officer in charge of the jurors, or any person appointed by the court to direct the jurors' attention to a particular place or site, and the trial judge, may speak to the jury concerning a subject connected with the trial; any such communication must be recorded in some fashion.

- (G) ~~Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The plaintiff or the prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the plaintiff or the prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. The court may impose reasonable time limits on the closing arguments.~~
- (H) ~~Instructions to the Jury. Before closing arguments, the court must give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of the written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must instruct the jury as required and appropriate, but at the discretion of the court, and on notice to the parties, the court may instruct the jury before the parties make closing arguments and give any appropriate further instructions after argument. After jury deliberations begin, the court may give additional instructions that are appropriate.~~
- (I) ~~Materials in the Jury Room. The court may permit the jury, on retiring to deliberate, to take into the jury room a writing, other than the charging document, setting forth the elements of the charges against the defendant and any exhibits and writings admitted into evidence. On the request of a party or on its own initiative, the court may provide the jury with a full set of written instructions, a full set of electronically recorded instructions, or a partial set of written or recorded instructions if the jury asks for clarification or restatement of a particular instruction or instructions or if the parties agree that a partial set may be provided and agree on the portions to be provided. If it does so, the court must ensure that such instructions are made a part of the record.~~
- (J) ~~Review of Evidence. If, after beginning deliberation, the jury requests a review of certain testimony or evidence, the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may order the jury to deliberate further without the requested review, so long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.~~

Staff Comment: MCR 2.513 is completely rewritten. The rule collects the rules governing jury trials in civil and criminal cases in a single rule. Additional provisions ensure that jurors have the necessary information to enable them to deliberate and reach a decision based on the facts and the law applicable to a case.

Subrule (A) requires a court to give preliminary instructions to the jury, including a statement of the elements of the civil claims or charged offenses. The court is required provide a written copy of the instructions to the jurors.

Proposed subrule (B) is substantially the same as MCR 6.414(B).

Proposed subrule (C) is substantially the same as MCR 6.414(C)

Proposed subrule (D) gives the court discretion to allow the parties to present interim commentary during the trial. Interim commentary, which are statements made by counsel in the course of trial to assist the jurors in comprehending or putting testimony or other evidence in the context of the theory of the case, is especially useful in a long or complex trial. It has been allowed in some jurisdictions, and is currently in use in Massachusetts. See, e.g., *Consorti v Armstrong World Industries*, 72 F3d 1003, 1008 (CA 2, 1995). The court may limit or bar interim commentary by a party when it appears that the opposing party will not be making such comment.

Proposed subrule (E) would allow the use of reference documents or notebooks by jurors. Such notebooks may reduce the jurors' need to take notes and would provide documents and other materials for the jurors' reference throughout the trial.

Proposed subrule (F) would allow the parties to use deposition summaries in lieu of reading deposition transcripts into the record. The proposed rule anticipates that the party proffering the testimony first would prepare the summary and the opposing party would then add a narrative to the summary based on that party's perspective of the deposition. If either side believed a summary was wrong or misleading, objections would be resolved by the trial judge.

Proposed subrule (G) would allow the court to craft a procedure designed to allow the jurors to better understand the expert testimony introduced on a particular subject. For example, the court could allow the experts to testify out of order so that the testimony of opposing experts in a given field would be heard sequentially. The court also could convene a panel discussion at which the attorneys would ask questions of the experts to educate the jurors in a particular field, followed by specific questions related to the experts' opinions on the relevant topic.

Proposed subrule (H) is substantially the same as MCR 6.414(D). The proposed rule eliminates language that allows a court to bar jurors from taking their notes into the jury room during deliberations.

Subrule (I) is substantially the same as MCR 6.414(E). The proposed rule ensures that the parties' objections, if any, will be heard outside the jury's presence.

Proposed subrule (J) incorporates the jury view provisions presently contained in MCR 2.513(A) and MCR 6.414(F).

Proposed subrule (K) would allow jurors to discuss the evidence in a case as it is admitted. Such discussions may promote timely questions to be propounded to the witnesses by the court. But jurors should be instructed that such discussions are tentative and are intended only to promote a better understanding of the evidence as is it introduced.

Proposed subrule (L) is substantially the same as MCR 6.414(G).

Proposed subrule (M) expands on MCR 2.516(B)(3). It would allow the court to summarize the evidence and to comment on the weight of the evidence, much like the attorneys do in closing arguments.

Proposed subrule (N)(1) adopts language from MCR 6.414(H) regarding final instructions to the jury.

Proposed subrule (N)(2) would allow a trial court to ask the jury if it needs immediate clarification on the final instructions that it received. The proposed rule also would provide for notification of the jury that it later may ask for a clarification on an instruction and would provide a procedure to handle such requests.

Proposed subrule (N)(3) would require the trial court to provide jurors with a copy of the final jury instructions.

Proposed subrule (N)(4) would specify the procedures a trial court may employ if a jury has reached an impasse.

Proposed subrule (O) is substantially the same as MCR 6.414(I).

Proposed subrule (P) is substantially the same as MCR 6.414(J). It provides further elaboration on the materials that the jury may take into the jury room to assist in deliberations.

The amendments of MCR 2.516 delete provisions that now are in MCR 2.513. The amendments to 2.512 incorporate the provisions that are now in MCR 2.516.

MCR 6.414 is deleted in its entirety, having been subsumed by MCR 2.513.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2006, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-19. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 11, 2006

Corbin R. Davis

Clerk